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# Legal Considerations for Possible Noise Ordinances for Newport Harbor

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LEGAL CONSIDERATIONS FOR POSSIBLE NOISE ORDINANCES  
FOR NEWPORT HARBOR



Prepared for the Newport Waterfront Commission, by Kristen Bonjour, candidate for *Juris Doctor*, 2012

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## I. INTRODUCTION

Noise, particularly unwanted noise, has been regulated for many years across the United States. While unwanted noise is not a new problem, recognition of health impacts from noise, such as hearing loss, sleep disturbance, and stress-related illnesses, has recently increased, necessitating more regulation. Additionally, unwanted noise has become a problem in harbors across the country, causing many towns to contemplate and implement new noise regulations. As noise issues increase in Newport Harbor, Rhode Island, the city of Newport may consider adopting regulations to ensure maximum enjoyment of the harbor, free from excessive noise, for residents and visitors.

The term noise conjures images of many impacts on everyday life.<sup>1</sup> Noise disturbances are a common part of life and can create continual problems, especially in urban environments. One area of struggle is applying noise control within a harbor and marina setting, where noise issues have become an increasing problem due to recent improvements in technology. As technology expands and the demand for modern conveniences on boats increases, less obvious sources of noise are becoming more disruptive.<sup>2</sup> Furthermore, intrusive noise is a problem municipalities must deal with as they expand to meet increasing population demands.<sup>3</sup> Municipalities must meet the challenge of effectively reducing harmful noise pollution while balancing conflicting interests.<sup>4</sup> While the legal basis for regulation has been well established, communities are

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<sup>1</sup> Aaron C. Dunlap, *Come On Feel the Noise: The Problem with Municipal Noise Regulation*, 15 U. Miami Bus. L. Rev. 47, 48 (2006).

<sup>2</sup> *Id.*

<sup>3</sup> Paula P. Bentley, Comment, *A Line in the Sand: Florida Municipalities Struggle to Determine the Line Between Valid Noise Ordinances and Unconstitutional Restrictions*, 35 Stetson L. Rev. 461, 462 (2006) (discussing the impact of noise pollution problem on municipalities).

<sup>4</sup> *Id.*

still struggling to find effective ways to exercise their authority to regulate. This paper discusses how noise has been traditionally regulated through ordinances, how some municipalities have applied those regulations to harbors, and how Newport, Rhode Island can apply similar ordinances to its city harbor.

## **II. WHAT IS NOISE, GENERALLY AND IN NEWPORT HARBOR?**

Much noise is a product of industrialization and has recently become an increasing problem for municipalities across the country.<sup>5</sup> Intrusive and irritating noise has become a growing problem in all communities, especially urban environments, but has also been spreading to rural and residential areas.<sup>6</sup> In 1974, the Environmental Protection Agency (“EPA”) estimated that nearly 100 million people lived in areas where the daily average noise levels exceeded fifty-five (55) decibels.<sup>7</sup> EPA’s research indicates that noise levels are directly related to population density, which has continued to grow at about one percent per year.<sup>8</sup> Although noise pollution has been an institution with communities since the industrial revolution, its impacts have only recently become understood.<sup>9</sup>

In the harbor environment, some sources of noise pollution include portable generators, engines and exhaust systems, and wind turbines. With increasing activity within harbors, including more people living on houseboats, harbor communities are

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<sup>5</sup> James L. Hildebrand, *Noise Pollution: An Introduction to the Problem and an Outline for Future Legal Research*, 70 Colum. L. Rev. 652, 652 (1970) (discussing the effect of noise pollution on the population).

<sup>6</sup> Bentley, *supra* note 3 at 462

<sup>7</sup> Sidney A. Shapiro, *Lessons from a Public Policy Failure: EPA and Noise Abatement*, 19 Ecology L. Q. 1, 4 (1992) (discussing noise levels and health and welfare consequences).

<sup>8</sup> Alice H. Suter, *Noise and its Effects*, 5 (1991) (report prepared for the Administrative Conference of the United States summarizing the different sources of noise in the United States and the relationship of noise to population density).

<sup>9</sup> Alexander Gillespie, *The No Longer Silent Problem: Confronting Noise Pollution in the 21<sup>st</sup> Century*, 20 Vill. Envtl. L. J. 181, 181 (2009) (discussing the effects of noise pollution control).

beginning to face the same noise problems as land-based communities. However, the application of noise control to harbors and marinas presents many issues regarding the best way to enforce and manage noise control.

Many governments, both federal and local, have sought to confront the problem of excessive noise, but there is no single miracle fix that exists to solve all noise pollution problems.<sup>10</sup> Difficulties arise in control and enforcement of noise pollution.<sup>11</sup> Although some noise may be considered appealing because of social benefits, such as entertainment, transportation, or energy needs, many people are now realizing the necessity to manage and control noise pollution.<sup>12</sup>

#### **A. MEASUREMENT OF SOUND**

Often the distinction between sound and noise is the perception given to the terms. “Noise” is generally defined as any undesired sound and often conjures elements of displeasure that “sound” does not.<sup>13</sup> People often desire sounds, such as music, but not noise, which is often considered a nuisance.<sup>14</sup> The main measurement unit of sound is the decibel (dB), which measures sound pressure or the air vibrations sound creates.<sup>15</sup> Generally the higher the decibels of a particular sound, the more powerful the sound is.<sup>16</sup> An increase in 10 dB doubles the “intensity” of a sound to the listener, easily leading to

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 214.

<sup>13</sup> *Id.* at 182

<sup>14</sup> *Id.* at 182; *See also* Dunlap, *supra* note 1 at 68.

<sup>15</sup> Dunlap, *supra* note 1, at 50; *see also* World Health Organization, *Guidelines for Community Noise* § 2.1 (1999), available at <http://www.who.int/docstore/peh/noise/Commnoise2.htm> (last visited April 10, 2011).

<sup>16</sup> *Id.*

dangerous noise levels to both the surrounding community and environment.<sup>17</sup> Also contributing to the dangerousness of noise is the number of people exposed to multiple sources of noise at any given time.<sup>18</sup> When noise becomes too loud or maintains a certain decibel level over an extended period, health concerns, such as hearing loss, begin to manifest.<sup>19</sup> High noise levels can also affect people in such ways as sleep disturbance, ability to concentrate, elevation of blood pressure and heightened anxiety.<sup>20</sup> All ailments can lead to a decreased quality of life for people who are consistently subject to high levels of noise pollution.<sup>21</sup>

## **B. WHAT ARE THE SOURCES OF NOISE COMPLAINTS IN NEWPORT HARBOR?**

Newport, Rhode Island attracts millions of people each year because of its scenic coastline, sailing excursions, historic mansions, and special events and festivities.<sup>22</sup> Many people go to Newport on boats to vacation in the city. Because this type of travel has become more popular in recent years and more boats are being equipped with the conveniences of home, Newport Harbor has been experiencing an influx of noise complaints from people staying on their boats within the harbor. Difficulties arise in allowing boaters to have their needs met while also catering to noise pollution control. Noise complaints have generally been focused on four sources of noise.

The first source of complaints is generators used to power batteries or run on-board conveniences such as air conditioning and other electric appliances. Generators come in two forms: portable gasoline electric generators and integral generators. The portable

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<sup>17</sup> *Id.*

<sup>18</sup> Guidelines for Community Noise, *supra* note 15.

<sup>19</sup> Dunlap, *supra* note 1, at 51.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Official Site for Newport, RI, <http://www.gonewport.com> (last visited Apr. 10, 2011).

generators are typically placed on the swim platforms of boats and can run for hours. The integral generators are located in the engine room and are often quieter than the portable units, although water is an excellent conductor of noise.<sup>23</sup> Complaints focus on running the generators for long periods of time, especially in the early morning and late evening hours and the fumes that are emitted from such systems.

The second source of noise complaints is unmuffled exhaust systems. Some recreational vessels, called cigarette boats, that run at high speeds and operate with open exhaust or unmuffled systems, are extremely loud. However, the Newport Noise Abatement Ordinance states, “[e]very...motorboat shall at all times be equipped with a muffler in good working order and in constant operation to prevent noise which exceeds the dB levels set forth...” The Harbormaster, designated through the city’s Harbor Ordinance, could issue a citation for violation of the City’s Noise Abatement Chapter. However, the boats often come into the harbor only for a short amount of time, making enforcement a difficult task.

A third source of noise complaints includes loud music and yelling from bars or other businesses along the harbor and waterfront or from people on their boats. However, this noise source has been traditionally resolved through a request to quiet down from a fellow boater or the harbormaster.

The final source of noise complaints is wind turbines. With the push of becoming “green” or environmentally friendly and increasing fuel prices, many boat owners are turning to mini wind turbines to power their boats instead of generators. Although there are no fumes associated with wind turbines, there are issues with noise. When wind

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<sup>23</sup> Integral Generators are typical in mid-to-large vessels inside the engine room, allowing them to be quieter above water. However, since the engine rooms are typically under the water, the sound conducts through the water and can be heard loudly when in the hull area of boats.



turbines are operating, the noise can range from a high-pitched screeching to a low frequency humming, both irritating to human ears.<sup>24</sup>

### **III. HOW IS NOISE REGULATED?**

Noise can be regulated through the Federal government and through state and local governments.

#### **A. FEDERAL REGULATION EFFORTS**

In 1970, pursuant to the National Environmental Policy Act of 1969 (“NEPA”), the EPA established the Office for Noise Abatement and Control (“ONAC”) to research noise pollution and report to Congress to aid in future legislation.<sup>25</sup> ONAC’s report to Congress resulted in the adoption of Noise Control Act of 1972 (“NCA”) following Congress’s conclusion that “inadequately controlled noise presented a growing danger to the health and welfare of the Nation’s population, particularly in urban areas,” and declared it was “the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare.”<sup>26</sup> Although Congress declared primary responsibility for noise control was held by state and local governments, it required the EPA assist state and local abatement efforts.<sup>27</sup>

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<sup>24</sup> There are two types of noise from wind turbines: aerodynamic caused by the blades and mechanical noise caused by the turning against gears. Current turbine designs reduce mechanical sound through soundproofing, therefore the aerodynamic sound is what is normally heard. In the range of 35 to 45 dB, at a distance of 350 meters, sound produced by wind turbines is similar to the background sound found in a typical home. American Wind Energy Association, Utility Scale Wind Energy and Sound, *available at* [http://www.awea.org/learnabout/publications/upload/Utility-Scale-Wind-Sound-Fact-Sheet\\_May-2011.pdf](http://www.awea.org/learnabout/publications/upload/Utility-Scale-Wind-Sound-Fact-Sheet_May-2011.pdf) (last visited May 15, 2011).

<sup>25</sup> Bentley, *supra* note 3, at 467.

<sup>26</sup> *Id.*; Gillespie, *supra* note 9, at 193; Shapiro, *supra* note 7, at 8.

<sup>27</sup> Bentley, *supra* note 3, at 467.

In 1978, Congress amended the NCA with the Quiet Communities Act, which authorized ONAC to provide financial and technical assistance to state and local governments and resulted in the creation and distribution of several model ordinances.<sup>28</sup>

The progress of EPA's efforts in stimulating interest in noise pollution control came to a drastic halt in 1981 when the Reagan Administration cut funding for ONAC.<sup>29</sup> This resulted in a dilemma within the EPA who maintained responsibility for enforcing the noise regulations, however, without a budget or a program for enforcement.<sup>30</sup> Although NCA was never repealed, and remains in effect today, federal noise control efforts have decreased.<sup>31</sup> NCA has played a role in transportation noise control, but this precludes the state and local governments, now left to implement noise control on their own, from enacting their own regulations within the transportation sector of noise pollution.<sup>32</sup>

## **B. LOCAL REGULATIONS**

To combat the increasing problem of noise, communities and local governments are attempting to regulate noise in a variety of ways.<sup>33</sup> Several communities concentrate on regulating through zoning-based ordinances and a few continue to use the tradition of common law nuisance.<sup>34</sup> Most communities have regulations that attempt to regulate with ordinances that use decibel limits or ban unnecessary noise.<sup>35</sup> The most important part, no matter how noise is regulated, is the enforcement of regulation.<sup>36</sup>

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<sup>28</sup> *Id.* at 467-8.

<sup>29</sup> Gillespie, *supra* note 9, at 194; *see also* Bentley, *supra* note 3, at 468.

<sup>30</sup> Bentley, *supra* note 3, at 468.

<sup>31</sup> *Id.* at 468-9.

<sup>32</sup> Dunlap, *supra* note 1, at 60.

<sup>33</sup> *Id.* at 49.

<sup>34</sup> *Id.*

<sup>35</sup> *See* Newport, R.I., Mun. Code tit. 8, ch. 12 (2011), *available at* [http://library4.municode.com/default-test/home.htm?infobase=16524&doc\\_action=whatsnew](http://library4.municode.com/default-test/home.htm?infobase=16524&doc_action=whatsnew),

## 1. TYPES OF NOISE REGULATIONS

### i. NUISANCE REGULATION OF NOISE

Nuisance has been used by the common law as a way to regulate property uses for many years through local or state police enforcement.<sup>37</sup> Nuisance is defined as “a condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property.”<sup>38</sup> Initially, United States communities controlled noise through nuisance law, which is generally split into two categories: public nuisance and private nuisance.<sup>39</sup>

Private nuisance is a condition or action, such as excessive noise, that interferes with an individual’s enjoyment of his or her own property.<sup>40</sup> A public nuisance impacts the larger community and often involves many people.<sup>41</sup> Most actions brought under nuisance law for noise are private actions because noise rarely impacts an entire community.<sup>42</sup> Courts will often take into account the reasonableness of the noise because noise complaint in one neighborhood (for example, excessive guitar playing in a retirement community) may be acceptable in another (such as an urban apartment building housing artists and musicians).<sup>43</sup>

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Annapolis, M.D., Mun. Code tit 11, ch. 11 (2011), *available at* <http://library.municode.com/index.aspx?clientId=16754&stateId=20&stateName=Maryland>

<sup>36</sup> Dunlap, *supra* note 1, at 49.

<sup>37</sup> *Id.* at 68; Steven N. Brautigam, Note, *Rethinking The Regulation of Car Horn and Car Alarm Noise: An Incentive-Based Proposal to Help Restore Civility to Cities*, 19 Colum. J. Envtl. L. 391, 417 (1994) (discussing common law approaches to controlling noise pollution).

<sup>38</sup> Black’s Law Dictionary, Nuisance, 1171 (9<sup>th</sup> ed. 2009).

<sup>39</sup> Dunlap, *supra* note 1, at 68.

<sup>40</sup> *Id.*; *See also* Black’s Law Dictionary, Nuisance, 1171 (9<sup>th</sup> ed. 2009).

<sup>41</sup> *Id.*

<sup>42</sup> Dunlap, *supra* note 1, at 68.

<sup>43</sup> *Id.* at 69.

However, due to this consideration, nuisance law is dependant on the surrounding circumstances, which can create issues in community expectations and enforcement.<sup>44</sup> Other problems with enforcement include non-permanent noise such as moving cars with loud stereos or boats where the owner cannot be determined or in urban environments where noise is caused by an infinite number of sources.<sup>45</sup>

## **ii. ORDINANCE REGULATION OF NOISE**

On the local level, noise control ordinances exist in some form in almost all municipalities, although the methods of control vary widely.<sup>46</sup> Most ordinances come in one of two forms: first, regulating based on specific allowable decibel limits; and second, regulating based on a general ban on loud and unnecessary or continuous noise.<sup>47</sup>

Courts and legislatures generally approve the ordinances that limit decibel levels because of the objective standard for measuring.<sup>48</sup> Since some noise is likely to come from various forms of speech, regulating noise implicates the First Amendment's freedom of speech and assembly clauses.<sup>49</sup> The United State Supreme Court has held the government may impose time, place, or manner restrictions on protected speech, even if such takes place in a public forum, provided the regulations are content neutral, allow "ample channels for communication" and are "narrowly tailored to serve a significant

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<sup>44</sup> *Id.* at 70.

<sup>45</sup> Hildebrand, *supra* note 5, at 683; Brautigam, *supra* note 22, at 419.

<sup>46</sup> Bentley, *supra* note 2, at 470.

<sup>47</sup> Dunlap, *supra* note 9, at 71.

<sup>48</sup> *Id.*

<sup>49</sup> Bentley, *supra* note 2, at 473.

governmental interest.”<sup>50</sup>If a noise ordinance places restrictions on the time, place or manner of protected speech, the law must pass all three prongs of this test to be upheld.<sup>51</sup>

In order for a noise provision to be content neutral, the government’s purpose in enacting the law is the controlling consideration.<sup>52</sup> If the intention is to suppress speech, the regulation will be deemed content-based and unconstitutional.<sup>53</sup> In order for a noise ordinance to have ample alternative channels, citizens must be able to express themselves in other ways, such as lower volume, during specific times, or at specific locations.<sup>54</sup> Narrowly tailored includes ensuring the regulation could not be achieved in less restrictive ways to serve the government’s interest in regulating.<sup>55</sup>

By placing a decibel level, the content of the noise is not regulated; therefore, ensuring measurements meet constitutional limitations and are narrow and consistent.<sup>56</sup> Regulating by decibel limit ordinances also allows municipalities to be fact specific by implementing regulations based on zoning of the city or regulating based on hours of the day.<sup>57</sup> The Model Community Noise Ordinance distributed by the EPA is an example of a decibel limit ordinance and provides many municipalities guidance on adopting new regulations.<sup>58</sup>

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<sup>50</sup> *Id.* at 473 (quoting *Ward v. Rock against Racism*, 491 U.S. 781, 791 (1989)).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 474.

<sup>56</sup> Dunlap, *supra* note 1, at 72.

<sup>57</sup> *Id.* at 71.

<sup>58</sup> Model Community Noise Control Ord. (EPA 1975), *available at* [http://www.popcenter.org/problems/loud\\_car\\_stereos/PDFs/epamodel.pdf](http://www.popcenter.org/problems/loud_car_stereos/PDFs/epamodel.pdf) (last visited April 10, 2011); *See also* Bentley, *supra* note 3. at 468.

However, difficulties emerge with untrained personnel enforcing the ordinances and the required need for expensive noise measurement tools.<sup>59</sup> Inherent in setting noise control on decibel limits are problems with standard setting and enforcement.<sup>60</sup> Often, sound cannot be separated from its environment, meaning that one source of noise cannot be separated from all the sounds in a particular area.<sup>61</sup> This can be especially difficult in urban or highly populated areas such as Newport, Rhode Island. Also, noise is a fluctuation of distance, so the reading is only meaningful if the distance is recorded.<sup>62</sup> Offensiveness of noise can vary with the frequency and intensity, meaning that two noises registering the same decibel reading can be more or less intrusive and annoying to the listener depending on the pitch.<sup>63</sup>

When regulating based on a “loud and unnecessary” standard, determining a nuisance becomes more complicated.<sup>64</sup> Even though the United States Supreme Court has upheld the constitutionality of the “loud and raucous” standard, many ordinances with the standard have been struck down due to arbitrariness and vagueness and the subjective nature of the standard, which leave courts and local governments to determine who decides what is “loud and raucous” and what is not.<sup>65</sup> Often cities work around the subjectiveness by adding a “reasonable person”<sup>66</sup> standard, which can save an ordinance

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<sup>59</sup> Bentley, *supra* note 3, at 470.

<sup>60</sup> Hildebrand, *supra* note 5, at 688.

<sup>61</sup> *Id.* at 689.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Dunlap, *supra* note 1, at 71.

<sup>65</sup> *Kovacs v. Cooper*, 336 U.S. 77, 85 n.6 (1949); *See also* Dunlap, *supra* note 1, at 71-2.

<sup>66</sup> The phrase “loud and raucous” describes noise standards in vague terms and fails to give warning of what conduct is prohibited and fails to set guidelines for enforcement. Courts generally look to whether a persons of “common intelligence” understood the prohibitions without the need to “guess at its meaning.” *See* Bentley, *supra* note 3 at 478 (quoting William B. Harvey, *Street Preaching Versus Privacy: A Question of Noise*, 14 St. Louis U. Pub. L. Rev. 593, 601 (1995)).

from vagueness, but still leaves the same problems for legislatures and courts to decide what is “reasonable.”<sup>67</sup>

Even though most cities throughout the country have adopted noise restrictions and remedies for noise control, some ordinances have proved inadequate in practice.<sup>68</sup> Common law<sup>69</sup> nuisance and outdated ordinances are not sufficient to protect citizen’s rights, health, and safety from damages caused by noise pollution.<sup>70</sup> The only way to ensure adequate protection is to understand the noise issues facing the particular area, tailoring noise control to the problems and consistently updating it to ensure that the regulation is adequately regulating what it is intended to.

## **2. NEWPORT’S REGULATION OF NOISE**

The city of Newport, Rhode Island regulates noise pollution by a noise control ordinance similar to the Model Community Noise Control Ordinance distributed by the EPA.<sup>71</sup> Newport’s noise regulations present unique complications due to the fact that millions of people come to visit the city each year from all over the world, increasing the city’s population dramatically, and the close proximity of homes to each other and to commercial areas within the city.

The Newport noise ordinance provides exceptions for common noises that contribute to running the city including, but not limited to, emergency vehicles, military

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<sup>67</sup> Bentley, *supra* note 3, at 480.

<sup>68</sup> Hildebrand, *supra* note 5, at 655.

<sup>69</sup> Common Law is a system of deciding cases based on precedent (legal principles developed in earlier case law) originated in England and adopted by the U.S. USLEGAL.COM, Common Law Law & Legal Definition, *available at* <http://definitions.uslegal.com/c/common-law> (last visited May 14, 2011).

<sup>70</sup> *Id.*

<sup>71</sup> Newport, R.I., Mun. Code tit. 8, ch. 12 (2011), *available at* [http://library4.municode.com/default-test/home.htm?infobase=16524&doc\\_action=whatsnew](http://library4.municode.com/default-test/home.htm?infobase=16524&doc_action=whatsnew); See also Model Community Noise Control Ordinance, *supra* note 55.

operations, and snow removal equipment.<sup>72</sup> The ordinance then separates the town into zoning districts and places time and decibel limits on noise within each district.<sup>73</sup> Relevant districts to the harbor include the Waterfront Business District and the Public Water District.<sup>74</sup> In the Waterfront Business District, from 1:00 am until 7:00 am, sound is limited to 55 dB and is limited to 75 dB at all other times.<sup>75</sup> In the Public Water District, from 1:00 am until 7:00 am, sound is limited to 55 dB and is limited to 65 dB at all other times.<sup>76</sup> The ordinance does contain specific provisions for musical instruments, sound amplifying equipment, motorized vehicles, construction, stationary nonemergency signaling devices, and animals.<sup>77</sup> Within the motorized vehicles section, the ordinance regulates the allowable noise level at speed limits. The section also states, “[e]very motor vehicle and *motorboat* shall at all times be equipped with a muffler in good working order...”<sup>78</sup> The “good working order” seems imperative to operating a motorboat within city limits, and although the state requires motorized vehicles to pass yearly inspections, neither the city nor state ordinance makes an effort to articulate what falls within the definition.<sup>79</sup> Although the Harbormaster and City Police are considered different and separate departments, the Harbormaster is given enforcement authority through the City’s Harbor Ordinance within the waters of the city and the ability to issue citations for violation of the ordinance, or simply for not

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<sup>72</sup> Newport, R.I., Mun. Code tit. 8, ch. 12.060 (2011).

<sup>73</sup> *Id.* at ch. 12. 080.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at ch. 12.110 – ch. 12. 160

<sup>78</sup> *Id.* at ch. 12.130 (emphasis added).

<sup>79</sup> R.I. Gen. Laws §31-38-7 (2010). *See also* Newport, R.I., Mun. Code tit. 8, ch. 12.130 (2011).



following his orders when he asks an offender to cease creation of loud and disruptive noise.<sup>80</sup>

At the end of the ordinance there is a section titled, “Sound Variances,” which allows for people to apply for a variance from the City Council.<sup>81</sup> It requires such person to submit an application with a fee and be subject to a public hearing.<sup>82</sup> The Council, in making its decision, will balance the hardship to the applicant, the community and other persons if not granted against the adverse impact on health, safety, and welfare of persons and the community affected if granted.<sup>83</sup>

#### **IV. MODELS FROM OTHER MUNICIPALITIES THAT NEWPORT CAN BUILD ON**

Regulation of noise pollution is generally left to local municipalities and cities to regulate since funding was cut for ONAC. Cities have developed a variety of regulations to conform to the particular cities noise issues.<sup>84</sup> Because of the variety of ordinances that exist, cities or towns can often look to others similarly situated to find and apply the best practices for their city or town. However, although there are many city noise ordinances regulating noise, there are very few cities that have enacted harbor specific noise

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<sup>80</sup> Newport, R.I., Mun. Code tit. 12, ch. 28.020 (2011).

<sup>81</sup> *Id.* at ch. 12.180. A “variance” is a license to do some act contrary to the usually rule. *See* Merriam-Webster.com, Variance, *available at* <http://www.merriam-webster.com/dictionary/variance> (last visited May 14, 2011).

<sup>82</sup> A person seeking a sound variance shall file an application with city council which contains information which demonstrates that bringing the source of the sound or activity for which the sound variance is sought into compliance with the noise abatement chapter would constitute an unreasonably hardship to the applicant, the community or other persons. An advertisement of the application will be made at least once, 7 days prior to a public hearing, in a newspaper of general circulation in the city. During the hearing council will review the application and evidence to determine whether the hardship to the applicant if not allowed will outweigh the adverse impact on the health, safety, and welfare of affected persons. The council will then place on public file a copy of the decision and the reasons for granting, denying, or revoking the sound variance. *See id.*

<sup>83</sup> *Id.*

<sup>84</sup> Bentley, *supra* note 3, at 468-9.

ordinances.<sup>85</sup> Even with all the varieties of management and enforcement, the goal is the same: maintain low exposure to noise to protect health and well being of the community and surrounding environment.<sup>86</sup> Education can be useful and can come in a variety of forms. Newport Harbor could have signs or pamphlets for visitors to educate and help them determine what are acceptable noise levels and what are not. Another solution is simply asking the offenders to cease the operation of the noise, which can mitigate most issues of noise facing harbor communities. However, while education can be a helpful tool, creating strong and clear ordinances can help with preemptive prevention and when the offender refuses to cease when requested to do so.

#### **A. CREATE AN ORDINANCE FOR PEOPLE LIVING ON BOATS**

The City Council of Newport Beach, California has established an ordinance specifically to address and regulate persons living aboard vessels on offshore moorings.<sup>87</sup> In order to regulate, the ordinance requires any person living on-board a vessel to obtain a permit before doing so.<sup>88</sup> However, the ordinance will not offer permits to persons who do not intend to make the vessel their principal residence, which means they must live on board for no less than eight months in a calendar year.<sup>89</sup> For Newport, Rhode Island to copy this exact ordinance would be impractical because most people are only visiting the city for short periods of time. However, the city could create a permitting process for anyone

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<sup>85</sup> Telephone Interview with Eric Zwerling, Director, The Rutgers Noise Technical Assistance Center (Apr. 29, 2011).

<sup>86</sup> Guidelines for Community Noise, *supra* note 15, §5

<sup>87</sup> Newport Beach, Cal., Mun. Code tit. 17, ch. 40 (2011), *available at* <http://www.codepublishing.com/CA/NewportBeach/>

<sup>88</sup> *Id.* at ch. 17.40.030

<sup>89</sup> *Id.*

staying on their boats within the harbor limits, which would allow information about noise pollution to be passed to such people.

The Live-Aboard Ordinance of Newport Beach, California requires the permit to be filed with the Harbor Resources Manager.<sup>90</sup> To implement a similar ordinance in Newport, Rhode Island the city council would need to either create a similar position or give another qualified position the extra responsibility of approving requests. Giving an existing position within the harbor extra duties may be unfeasible given his or her other important roles. The city council may also be unable to create another position to handle the permits because it would require money to allocate for salary and benefits.

Ultimately, while good practice, imposing permitting restrictions for visitors in Newport, Rhode Island would create more work and hassle for the city than benefits. Requiring permits would also face implementation challenges such as informing a first-time or one-time visitors they are required to obtain a permit in order to stay on their boat. It may result in an unnecessary amount of fines resulting in a deterrent effect for boaters to visit the city.

#### **B. AMEND NEWPORT'S NOISE ABATEMENT CHAPTER TO EXTEND INTO THE CITY'S WATERS AND SHORES**

Annapolis, Maryland's City Council established within the town's ordinance on City waters that the "City Code Section 11.12.020, Disturbing the peace – Noise prohibition, shall apply in and on that portion of City waters which is subject to a six mile per hour speed limit." The ordinance clarifies that the noise prohibition chapter shall not apply when an engine is started, idling, or running, but would apply to repetitive revving sounds.

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<sup>90</sup> *Id.*

Newport, Rhode Island could amend the city's current Noise Abatement Chapter and adopt rules similar to make clear that the noise ordinance applies to both the water and land in the city limits. To do this, the city would need to make specific limits for the noise issues faced by the harbor in an effort to allow boaters to maintain their needs while keeping noise pollution at low levels for the surrounding community. In order to ensure that the varieties of noise facing the harbor are covered, the city council should spend time identifying and mapping noise sources.<sup>91</sup> This would ensure that the ordinance does not exclude noise that is required for operation of the harbor. Within this ordinance, the City Council may want to apply a model of land-use planning/zoning and make certain parts of the harbor quieter than others. This would allow boaters who want a quiet environment to be separated from those who have generators running, wind turbines, or other loud noises. The Harbor could provide visitors with a map that would direct them to the "quiet areas."

However, unless clearly marked, it may cause confusion on what limits apply to land-based noise and what applies to the water. If the harbor was to create "quiet areas," there may be obstacles including current leases of moorings and existing structures that would make it difficult to section off the harbor. The clearer choice would be to create a section within the Harbor Ordinance that applies the Noise Abatement Chapter to the water for clear reading by all people.

### **C. CREATE A HARBOR ORDINANCE WITH A SECTION FOR NOISE ABATEMENT**

Another coastal town that Newport can draw from is Nantucket, Massachusetts. The City Council of Nantucket has established an ordinance titled "Wharves and Waterways" which created regulations regarding the use and rental of wharves, slips, docks, and

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<sup>91</sup> Guidelines for Community Noise, *supra* note 15, §5.1

moorings.<sup>92</sup> Within the ordinance it states, “[u]nnecessary noise, loud talking, or playing of musical instruments between the hours of 11:00 p.m. and 8:00 a.m. is not permitted.”<sup>93</sup> However, the term “unnecessary” is very vague and could be struck down in court and easily could be made more specific. Newport could use this as an example to expand upon while developing an ordinance to meet the city’s needs.

Within the Harbor Ordinance, the City Council should add a section dedicated to noise pollution control addressing each noise problem within the harbor and either regulate based on noise and time limitations or prohibiting certain types of noise all together. The best way to accomplish this is to spend time mapping and identifying noise sources to ensure that the adopted ordinance does not have voids. This section on noise control would work with the city’s general Noise Abatement Chapter, and therefore would not need to be expansive but only address the particular problems faced by the harbor. If the City Council elects to take this option, it could still create the “quiet areas” discussed above. Although it may take a lot of effort on the part of many people and is not an immediate fix, this would be the most practical and easy to enforce solution for the city. This option would allow the harbor to adapt to expanding noise in the future and keep the noise at a clear and narrow limit. It would also allow for easy and direct access for the public to know the allowances and limitations of noise creation within Newport, Rhode Island’s City Harbor.

## **V. CONCLUSION**

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<sup>92</sup> Nantucket, Mass., Mun. Code, ch. 137 (1984), available at <http://www.ecode360.com/?custId=NA0948>

<sup>93</sup> *Id.* at ch. 137-3 (C)

There are no simple resolutions that can answer all the problems associated with noise pollution. However, although there are innumerable sources of difficulties that obstruct regulation, there are also many potential solutions. Noise is a part of life and is often desired by some people because of the benefits received, such as generators, music or wind turbines. Inadequate or ineffective legislation can make attempts to regulate noise pollution complex. Municipalities must accept that although noise is a necessary part of life, it is necessary to manage noise pollution through effective noise control administration. The most effective approach to noise control is combine multiple management tools to incorporate all the various forms of noise while balancing the need to create noise in some circumstances, while regulating on others. Only through taking action to regulate noise can municipalities ensure noise does not become an uncontrollable problem.